

WATER ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 4

Flood Insurance

Flood insurance obligations

Section 70: Flood insurance obligations

252. *Section 70* gives the Secretary of State the power to require a relevant insurer to issue insurance policies for a prescribed number of registered premises (a “Flood Insurance Obligation”).
253. Subsections (1) to (3) give the Secretary of State the power to make regulations which require a relevant insurer to issue insurance policies that provide cover to a prescribed number of “registered premises”. Registered premises are defined in section 82(8) as properties included in the register of premises subject to greater flood risk. Insurers can be required to issue different numbers of policies for different descriptions of risk; the intention is that insurers may be required to fulfil quotas relating to both buildings and contents insurance.
254. Subsection (4) sets out factors that the regulations can specify are to be taken into account in determining the prescribed number of registered premises in respect of which a relevant insurer must issue insurance. These factors include a target number of registered premises that the Secretary of State determines under section 71(1), and the insurer’s share of insurance business of a prescribed description.
255. Subsection (5) provides for the regulations to specify how a relevant insurer’s share of insurance business should be calculated and the circumstances under which a relevant insurer may be exempt from the Flood Insurance Obligation, including by reference to the amount of business the insurer does. This subsection makes provision for regulations to set out the circumstances in which the Flood Insurance Obligation would cease to apply for a relevant insurer. This subsection also allows the regulations to specify circumstances in which a policy issued by an insurer would not count towards meeting its quota and to specify circumstances in which a relevant insurance policy issued by one insurer can count towards the Flood Insurance Obligation imposed on another relevant insurer. This subsection also makes provision for regulations to provide that properties at greater flood risk count for more, and those at lesser risk count for less, when it is being decided how many registered premises an insurer has insured.
256. Subsection (6) provides that the regulations may require an insurer to use information held by the Secretary of State, a person acting on the Secretary of State’s behalf or the Financial Conduct Authority to determine their share of insurance business.
257. Subsection (7) states that provisions allowing policies issued by one insurer to count for discharging another’s Flood Insurance Obligation should not be construed as requiring a change of insurer. Subsection (8) provides for a case where an insurer has not provided

the information required by section 72 for determining whether an insurer is a relevant insurer under this section, whether an exemption applies and what share of business an insurer would be treated as having. Subsection (9) imposes a duty on the Secretary of State to consult with persons he considers appropriate before making regulations under this section. The Secretary of State expects to consult the financial regulators.

Section 71: Target number

258. Subsection (1) gives the Secretary of State the power to periodically set the target number. The target number is the number of registered premises as regards which insurers are collectively required to issue policies under the regulations in section 70. It can be expressed as a percentage of the premises on the register. The regulations can specify different targets for insurance policies relating to different descriptions of risk. Regulations made under this section may set target numbers for two or more consecutive compliance periods so that insurers may plan ahead.

Section 72: Information

259. Section 72 provides for the Secretary of State to set out in regulations arrangements for the provision of information or production of documents by insurers for the purposes of the requirements on insurers under section 70. Subsection (2) provides for regulations that give the Secretary of State or a person acting on his behalf the power to require certain documents or information that help demonstrate whether or not the insurer is a “relevant insurer” or whether an exemption applies under subsection (5)(b). Subsection (3) provides further detail on the types of information or documents that may be required from insurers in the regulations and subsection (4) provides for the regulations to specify whether the information should be provided to the Secretary of State or a person acting on the Secretary of State’s behalf.
260. Subsection (5) is about how information and documents are to be delivered and how they are to be verified or authenticated. In subsection (6) the regulations may put limits on what persons receiving the information may then do with it. The regulations may also allow the Secretary of State to publish information about the amount of business done by the insurance industry as a whole in relation to prescribed risks. This will enable insurers to calculate their targets in line with the regulations made under section 70.

Section 73: Section 72: further provision

261. Section 73 provides the Secretary of State with the power to make regulations for enforcement of the regulations made under section 72. Under subsection (2) regulations may in particular make provision for the Secretary of State or a person acting on his behalf to impose sanctions, including civil penalties. The regulations would set out the procedures which the Secretary of State must follow before a sanction can be imposed and provide for costs incurred in connection with imposing a sanction to be recovered. The regulations would provide for appeals against sanctions or requirements to pay costs to be made to the First-tier Tribunal.
262. Subsection (3) states that the regulations would provide in particular for civil penalties of a fixed amount and for further sums to be payable where an insurer continues to not comply with the requirements (that is to continue to fail to provide the required information). The regulations would also include provisions for the process by which a civil penalty and any amount of costs may be recovered.

Section 74: Register of premises subject to greater flood risk

263. Section 74 provides for the Secretary of State to set out in regulations arrangements for the creation and maintenance of a register of premises in the UK which are subject to greater flood risk. Subsections (2) and (3) allow the regulations to provide for the level of flood risk registered premises face to be recorded in the register. The regulations may

do this by setting out flood “risk bands” and requiring that the register record which risk band applies to particular premises.

264. Subsection (4) provides for the regulations to exclude particular types of properties from the register including in particular those constructed after a certain date. Subsection (5) provides for the regulations to specify the information to be contained in the register and to make access, publication, disclosure and notification arrangements for the register and the information contained in it. Subsection (6) provides for conditions to be set on recipients of the information with regard to onward disclosure of the information and arrangements for penalties to be issued if those conditions are not complied with.
265. Subsection (7) provides for the regulations to specify that only applications for the inclusion of a property in the register of premises subject to greater flood risk made by or on behalf of a person with the qualifying interest in the premises may be allowed. The “qualifying interest” is to be defined in regulations under section 82(6).
266. Subsection (8) provides for the regulations to permit the removal of premises from the register if a person with the qualifying interest in the property requests its removal. Under subsection (9), before making regulations under these provisions the Secretary of State must consult with the Welsh Ministers, the Scottish Ministers and the Department of Agriculture and Rural Development in Northern Ireland.

Section 75: Functions of relevant bodies

267. **Section 75** provides for the regulations made under section 74 to set out which bodies will carry out which functions in connection with the register of premises subject to greater flood risk.
268. Subsection (1) specifies which functions may be carried out by the “relevant bodies” as those that are connected with the creation and ongoing maintenance of the register, access to or disclosure of information contained within the register, publication of the register and notifying people when particular premises are included in the register. Subsection (2) names the bodies that are to be the relevant bodies in different parts of the United Kingdom.
269. Subsection (3) enables the regulations to specify an additional role for the Environment Agency. The additional role would involve the Environment Agency coordinating the work carried out by relevant bodies under subsection (1) and promoting the consistency of this work. Subsection (4) enables the regulations to require relevant bodies to cooperate with each other in this work and for relevant bodies other than the Environment Agency to cooperate with the Environment Agency in the carrying out of its additional duties under subsection (3).
270. Subsection (5) provides that regulations may provide for information held for council tax purposes by the Valuation Office to be disclosed to the Environment Agency or the Natural Resources Body for Wales. Restrictions can be placed on further disclosure and how the data can be used. This data will enable properties where construction was completed after a certain date to be excluded from the register. Similar provisions are not required to cover the required data in Scotland and Northern Ireland because this is already publicly available.

Section 76: Reviews and appeals

271. **Section 76** enables the regulations made under section 74 to provide for a person with the qualifying interest in a property to seek a review of a decision by a relevant body that the property does not qualify to be included on the register of premises subject to greater flood risk. It also enables the regulations to provide for that person to appeal to the First-tier Tribunal in England and Wales, the sheriff in Scotland, or the Water Appeals Commission for Northern Ireland, if upon review the relevant body has decided that the property does not qualify for inclusion on the register.

Section 77: Expenses of relevant bodies

272. **Section 77** provides the Secretary of State with the power to make regulations to raise a levy from insurers, with the consent of the Treasury. The levy is intended to allow Government to recover its costs in maintaining the register. Regulations could also provide for the recovery of any costs incurred by the Secretary of State in relation to the administration of the levy.
273. Subsection (2) states that regulations may specify the rate of the levy, or the way in which it will be calculated, as well as how often and in what way it will be paid by insurers. Under subsection (3) the regulations may, in particular, make provision for determining the amount of the levy based upon the qualifying expenses incurred by the Environment Agency and its equivalents in the Devolved Administrations.
274. Subsection (4) enables regulations to make provision for the sums payable as a levy to be recoverable as a civil debt. Under subsection (5), before making the regulations, the Secretary of State must consult with the Welsh Ministers, the Scottish Ministers and the Department of Agriculture and Rural Development in Northern Ireland. Subsection (6) defines “qualifying expenses” as the proportion of a relevant body’s expenses that the Secretary of State considers reasonable in regard to its functions under section 74. “Qualifying expenses” also means those expenses of the Secretary of State attributable to carrying out functions conferred by and under this section.

Section 78: Compliance reports

275. **Section 78** provides the Secretary of State with the power to make regulations that require insurers to report the extent to which they have complied with their Flood Insurance Obligations. Subsection (2) provides that regulations may require insurers to report the extent of their compliance with the Flood Insurance Obligation in a specified period and may prescribe certain details to be supplied by insurers that support that report. Subsection (3) allows for the Financial Conduct Authority to be the responsible body for accepting reports under this section.

Section 79: Functions of the FCA

276. Subsection (1) of section 79 confers powers on the Treasury to make regulations giving the Financial Conduct Authority a role in monitoring and enforcing compliance with such of the requirements imposed under sections 70 and 78 as are specified.
277. Subsection (2) provides that the regulations may give the Financial Conduct Authority a role in enforcing compliance with such of the information requirements under section 72 as are specified. Subsection (3) specifies when the Financial Conduct Authority can be empowered to take enforcement action in relation to subsection (2). This is in cases where the insurer provides information that is not true or produces a document that is not correct; or in cases where measures available to the Secretary of State under section 73 have been taken without securing compliance.
278. Subsection (4) provides that the regulations may apply provisions of the Financial Services and Markets Act 2000 or the Financial Services Act 2012 (including with or without modifications) in relation to powers conferred on the Financial Conduct Authority under this section.
279. Subsection (5) makes mention of particular provisions in the Financial Services and Markets Act 2000 or the Financial Services Act 2012, which may be applied under subsection (4) in relation to powers conferred on the Financial Conduct Authority under this section for the purpose of its role in monitoring and enforcing compliance with those requirements imposed under sections 70 and 78 that are specified, and enforcing compliance with those requirements imposed under section 72 that are specified.

280. Subsection (6) provides that the regulations may enable the Financial Conduct Authority to make arrangements for the performance of functions on its behalf to the extent that the regulations prescribe.

Section 80: Reports by the FCA

281. Section 80 gives the Treasury enabling powers to provide by regulations for the Financial Conduct Authority to prepare reports on the discharge of its functions in relation to section 79. Subsection (2) provides for the regulations to specify the contents and timing of the reports, provide for copies of the reports to be given to the Secretary of State and others and provide for publication of the reports.

Section 81: Intervention by the FCA or the PRA

282. Section 81 confers powers on the Treasury to provide, by regulation, for the regulators (defined as the Financial Conduct Authority and the Prudential Regulation Authority under subsection (12)) to disapply or modify the requirements imposed under sections 70, 72 and 78. Subsection (2) defines the intervention power as the power conferred by regulations under subsection (1).
283. Subsection (6) describes particular situations that might be dealt with using the intervention power. Subsection (7) is mostly about the procedures for exercising the intervention power. Provision under subsection (7)(g) would require a regulator to keep under review cases in which it has used the power. Subsection (8) enables regulations under subsection (7) to except material from publication where publication would be contrary to the public interest. Subsection (9) sets out that the intervention power may be exercised in respect of an obligation imposed under section 70(1) only so as to disapply the requirements of the flood insurance obligation.
284. The Financial Conduct Authority and the Prudential Regulatory Authority have existing powers under the Financial Services and Markets Act 2000 and the Financial Services Act 2012 to supervise, monitor and enforce regulatory requirements imposed on financial services firms. Subsections (10) and (11) provide for regulations to extend those powers in relation to the intervention power, with or without appropriate modifications.
285. Subsection (12) defines the “regulator” as the Financial Conduct Authority or the Prudential Regulation Authority. Subsection (13) defines certain terms in this section by reference to their definitions in the Financial Services and Markets Act 2000.